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Global Cultural Law and Policy in the Age of Ubiquitous Internet

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Abstract: Digital technologies and the Internet in particular have transformed the ways we create, distribute, use, reuse, and consume cultural content; have impacted the workings of the cultural industries, and more generally the processes of making, experiencing, and remembering culture in local and global spaces. Yet, few of these, often profound, transformations have found reflection in law and institutional design. Cultural policy toolkits, in particular at the international level, are still very much offline and analog and conceive of culture as static property linked to national sovereignty and state boundaries. The article describes this state of affairs and asks the key question of whether there is a need to reform global cultural law and policy and if yes, what the essential elements of such a reform should be. The article is informed by the ongoing and vibrant digital copyright and creativity discourse[1] but seeks to address also the less discussed, non–intellectual property tools of the cultural policy package. It thematizes the complexity and the interconnectedness of different fields of policymaking, as various decisions critical to cultural processes are made by institutions without cultural mandate. While this problem is not entirely new and is naturally triggered by the intrinsic duality of cultural goods and services, the article argues that the digital networked environment has only accentuated complexity, spillover effects, and unintended consequences. The question is how to navigate this newly created and profoundly fluid space, so as to ensure the preservation and sustainable provision of culture. The article hopes to contribute to the process of finding answers to this taxing question by identifying a few essential elements that need to be taken into consideration when designing future-oriented cultural policy.

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1. SETTING THE SCENE: A FEW REMARKS

The international law of culture is a complex domain that encompasses a vast amount of treaties. They are both an expression of "cultural nationalism" as the right of the nation-state to protect its own culture and of "cultural internationalism" as the right of the international community to protect components of common human culture,[2] of the past and present, in times of war and peace. This, of course, is a highly stylized picture, which masks the complexity of the legal norms and institutions,[3] as well as the various contentions around the definitions of what culture is, what a nation is and whom culture belongs to, as well as around the underlying sets of rights and how they can be enforced.[4]

Globalization as the process of intensifying the movement of goods, services, capital, people, and ideas across borders has only made things more complex and contentious. On the one hand, it is evident that the nation-state is no longer the exclusive forum defining cultural policies. The production of cultural policy now happens across many sites and with the participation of various actors, many of them not related to the state, such as in civil society or indigenous group networks. On the other hand, the inherent duality of cultural goods and services as such that have economic value and can be traded, while being by their very nature "vehicles of identity, values and meaning,"[5] has meant that both economic and noneconomic interests are constantly affected.

In this context, it should be stressed that law-making, in particular at the international level, has not progressed with similar speed in these two areas. The institutionalization of economic globalization has advanced much more swiftly and led to closer, more binding forms of international cooperation, epitomized above all by the rules of the World Trade Organization (WTO). In this evolution, there have been only scant attempts to reconcile the two sides of cultural goods and services and the policies targeted at them. The majority of cultural instruments have above all strived to secure carve-outs where states can assert their sovereignty on cultural matters.[6]

Although many have argued that international law is in crisis and there is little if no movement ahead,[7] the past decade has been marked by significant developments in international cultural law. It suffices to mention three recent and key acts of this proactive standard setting: In 2003, delegates of 190 countries adopted the *Convention on the Safeguarding of the Intangible Cultural Heritage*;[8] in 2005, also under the auspices of the United Nations Educational, Scientific and Cultural Organization (UNESCO), agreement was reached on the *Convention on the Protection and Promotion of the Diversity of Cultural Expressions*,[9] and in 2007, the General Assembly of the United Nations adopted the *Declaration on the Rights of Indigenous Peoples*.[10]

What appears to be a common feature of these acts is that they are relatively broadly formulated and definitively go beyond trade in cultural objects. The 2005 UNESCO Convention on Cultural Diversity has particularly high goals. It aims

at nothing less than the sustainability of diversity of cultural expressions, taking a comprehensive and dynamic perception of culture. This is a marked shift from the defensive slogan of "cultural exception," which dominated the trade and culture discourse for some 30 years, during and after the WTO Uruguay round of negotiations (1986–1994).[11]

Unfortunately, even this bolder act of international treaty-making fails to provide guidance as to the suitable tools to be applied in order to better serve the global public good of a diverse cultural environment. The reasons for this are multiple. An important one relates to the longer narrative of juxtaposing trade and culture and the actual political battle triggered by the diverging interests on matters of trade and culture during the Uruguay round of negotiations, which led to the establishment of the WTO.[12] The second source of disappointment is the very act of the 2005 UNESCO Convention on Cultural Diversity. Although the Convention had an incredibly ambitious agenda and was widely applauded at the outset, with the benefit of hindsight, its impact can be assessed as modest.[13] We do not (as yet) see any legal or policy reform, neither as a result of the Convention's own implementation efforts,[14] nor as to the Convention's effect on the WTO regime, which it was supposed to counterbalance.[15] What the UNESCO Convention as a minimum does is to confirm (yet again) national sovereignty in cultural matters and preserve the status quo.[16]

This comes as no surprise, however, considering the complexities in the matrix of trade, culture, media, intellectual property, and human rights[17] and the starkly different sensibilities of the negotiating parties.[18] It is also fair to say that the global cultural policy discourse has been marked from its outset by a deeply convoluted understanding of the effects of trade, and more broadly of economic globalization, on culture.[19] The common (and often loud) statements are that cultural diversity is becoming impoverished and almost extinguished as the globalized flow of easy entertainment coming from Hollywood dominates and homogenizes.[20] The perceived peril for small art productions and local and indigenous culture is deemed immense and worthy of the state's counteraction. This picture is conventionally seen as being black and white; the many nuances of the complex commerce and culture interlinks are often missed out. Parties on both sides find examples to support their positions. Exponents of cultural protectionism tend to pick up their facts from the film markets, where the United States clearly dominates and where the power of big budget and aggressive marketing is self-evident. The free-market proponents make their case by using examples of local musicians gone global or the success of documentary productions.[21] While the truth is somewhere between the two extremes,[22] the discussion on "trade" and "nontrade" values is so extremely politicized, it renders any practical solution impossible.[23] Answers to critical questions such as "diversity of what?" and "diversity how?" remain unanswered too. This is regrettable as cultural diversity as a global public good does have its virtues and may offer a so-far unprecedented platform to actually address essential cultural concerns at the international level.

2. THE DIGITAL DISCONNECT

Regardless of the success so far or the potential for success of all these instruments at the international level, regardless also of their underlying justifications in the sense of whether it is right to protect culture through the nation-state, and very often against another culture,[24] the central argument this article aims to make is that they are all grounded in the analog and offline age—they are "culture law 1.0." Even the newer international treaties, referenced at the beginning of this article, do not mention digital technologies as an essential channel for their implementation. What is more, their drafters failed to consider the broader societal effects of digital technologies and the Internet in particular.

Describing the "digital" is not trivial, as it has triggered and continues to cause many and multidirectional effects.[25] For the sake of brevity, I use the concept of a transformed "information and communication environment," as so aptly developed by Yochai Benkler.[26] This terminological shortcut allows us to unpack for the purpose of the article, all those changes that are associated with the affordances of digital technologies, such as instantaneous communication to millions at basically no cost, low threshold of participation, perfect copies, no tangible medium, no scarcity in cyberspace, and completely different organization of information in cyberspace. But also and more importantly, it enables us to refer to the societal implications of these possibilities, which in a most immediately relevant way, transform the very ways we create, distribute, access, use, and reuse cultural content; the ways we participate individually or as part of a group in cultural processes; as well as change the transparency of cultural symbols and the ways they circulate in local and global contexts.[27]

Yet, it should be clear that I do not mean this as a sort of web-utopianism and a conception of digital technologies as a panacea for sustaining and enriching cultural practices. Indeed, many of the early cyberhype theories have not found enough support in reality.

One of them, the so-called long tail theory, preached naturally generated diversity, as the reduced barriers to entry allow new market players to position themselves and make use of niche markets, which are economically viable in the digital ecosystem because of the dramatically decreasing storage, distribution, and search costs.[28] Thus, supply and demand meet not only for "mainstream" products available in the "head" of the snake, but also for many other products, now available in the ever-lengthening "tail." So that, for example, indigenous music performers can become globally active, known, and potentially commercially successful.[29]

Even greater has been the promise of user-created content (UCC) as a powerful tool of democratization of content production and distribution. UCC, generated through the new type of "commons-based peer production"[30] can be said to embody the key media policy components of diversity, localism, and noncommercialism,[31] and in this sense could readily fulfill the key public interest

objectives without additional intervention. Further, it is argued that the Internet-facilitated communication without intermediaries or other substantial access barriers has already created the always-aspired-to vibrant "marketplace of ideas."[32]

Yet, despite the appeal of these transformative theories, evidence of current practices is much more nuanced. As for the long tail, it seems unclear, at least so far, whether an environment of unprecedented choice and sophisticated tools for identifying and accessing relevant content genuinely helps or harms the prospects for content that has not traditionally resided in the "head."[33] One of the inherent characteristics of the new "attention economy" is the granular level of competition for audience, so that as online platforms offer the possibility of tracking the popularity of individual pieces of information and entertainment, editorial decisions may be distorted in favor of topics and genres that have mass appeal.[34] Also, as global legacy media and Internet corporations merge, both horizontally and vertically, in the pursuit of better utilization of all available channels and platforms, diversity may in fact be lost. The question of real consumption is also vexed, as it appears that it remains limited to a handful of mainstream online sources that are, as a rule, professionally produced by white, educated men.[35] While the positivity for user creativity is still strong,[36] in the narrower sense of grassroots content production and its impact on democratic discourse, skeptical voices stress the dangers of balkanization and fragmentation of the public discourse.[37]

Despite this more nuanced approach and the acknowledgment that the Internet does not simply translate into a vibrant environment of cultural diversity, nor does it render cultural policies, as a matter of state intervention, obsolete, the argument that none or very few of these developments have been translated into the cultural policy debate and into thinking about appropriate legal design is still valid.

Another implication of digital media that is rarely considered is that the Internet has undoubtedly broadened the scope of cultural policy discussions, so decisions taken at all layers of the communication model, that is, with regard to networks, applications, and content,[38] matter also for the attainment of cultural objectives, more or less immediately. In this sense, questions of net and search neutrality (i.e., respectively, the discrimination between different types of transmitted content or between search results) or interoperability (i.e., the ability of different hardware and software to connect and work together), which were previously considered only peripheral to culture become relevant. Such questions affect not only the regulatory environment where cultural objectives are to be pursued but also its regulability, that is, whether and how it can be regulated.[39]

The predicament for appropriate regulatory design in this context is that it needs to be holistic and consider multiple regulatory domains, such as telecommunications, information technology, standards, trade, intellectual property, and Internet governance. Each of which is marked by its own peculiar dynamics, power plays, and path dependencies. One should also consider the macro picture of governance, where the state is no longer the only actor but there is a "multiplication of agencies

and forms of power that are active in the management of social systems."[40] Cyber-governance has also brought its own specific set of hybrid governance models,[41] while at the same time allowing effective unilateral state action in cyberspace,[42] as well as regulation through code and technology in general.[43] Such a profoundly fragmented environment renders the sustainable provision of global public goods particularly difficult,[44] and takes the quest for regulatory coherence to a higher level of complexity.[45]

3. FROM "CULTURE LAW 1.0" TOWARD "CULTURE LAW 2.0"

Admittedly, political decisions in the field of culture are not easy and neither is regulatory design. Despite the difficulties that this article has exposed, it is still worthwhile and important to ask whether the digital mismatch can be overcome. If yes, then what are the viable paths for reforming global cultural law and policies?

3.1. Opportunities Abound?

As possible paths for innovation, one can look at the very characteristics of the digitally networked environment. As discussed earlier, although we are still in a world where old and new media coexist, many of the processes of cultural creation, distribution, and consumption have changed and one can highlight the following features as particularly relevant to the present context: (i) proliferation of content and its different organization in cyberspace; (ii) new ways of distributing, accessing, and consuming content; (iii) empowerment of the user and reduced role of intermediaries; both related to (iv) the new modes of content production, where the user is not merely a consumer but is also an active creator, individually or as part of the community.

In fact, although the legal framework has not been adjusted yet, there have been already some interesting experiments combining all these features. I refer here to one of them, *Europeana*, as the leading European Union (EU) project. *Europeana* is the European Digital Library, which is meant to function as a multilingual common access point to Europe's distributed cultural heritage.[46] *Europeana*[47] was launched in November 2008 and allows Internet users to search and gain direct access to digitized books, maps, paintings, newspapers, film fragments, and photographs from Europe's cultural institutions. Presently some 30 million objects from more than 2300 institutions from 36 countries are available on *Europeana* with numbers constantly increasing.[48] The content is socially connected in various sites and platforms and also available through an iPad app. It is also downloadable and malleable under different copyright licensing regimes (such as the creative commons licenses).[49] All metadata (i.e., data about data) published by *Europeana* is available free of restrictions under the creative commons zero public domain dedication,[50] although the mentioning of attribution is recommended.[51] In this sense, *Europeana* not only aggregates incredible amounts of content but builds an

open, trusted source of cultural heritage, which is also meant to engage users in new ways of participating in their cultural heritage, and to facilitate knowledge transfer, innovation, and advocacy in the cultural heritage sector.

Across the Atlantic, the Digital Public Library of America (DPLA)[52] and the Digital Library of the Smithsonian[53] are two analogous endeavors. Similarly to *Europeana*, the DPLA is a collaborative platform that enables new and transformative uses of America's digitized cultural heritage. It offers its application programming interface (API) and open data to software developers, researchers, and others, who can create novel environments for learning, tools for discovery, and engaging apps.[54]

These initiatives, which are only a few of the various, public and private, digital library projects, point to the amazing opportunities of digital technologies and are a cause for optimism about both cultural preservation and making cultural heritage a living, essential part of contemporary cultural processes. The possibilities of interfacing analog and digital, connecting and managing metadata,[55] as well as engaging the communities are truly unprecedented, although they do come with a host of problems and intricacies.[56]

Despite the general positivity around digitization projects, such as *Europeana* or DPLA, there are a number of challenges, which possibly reduce their impact and their sustainability.[57] Some of them may be of technical character relating, for example, to compatibility of different formats and standards, or to the availability and quality of metadata. Other concerns relate to the efficiency and the sustainability of such initiatives, as they demand the mobilization of substantial public or private funds.[58] Most pertinently for this article, it should be stressed that many of the challenges are of a legal nature. Indeed, it could be maintained that these projects are possible *in spite of* the existing legal frameworks. The bulk of the problems come from copyright, which puts serious restrictions on digitization, for example, in dealing with orphan works,[59] as well as limits access to contemporary copyrighted works. Presently, the exemptions and limitations schemes in copyright do not enable digitized cultural preservation and retrieval efforts outside commercial market settings. In addition, digital technologies have allowed more effective control tools through technological protection measures, such as digital rights management (DRM) systems, which restrict access to and use of digital copyrighted content and whose circumvention is prohibited by law.[60]

What we see in most of the digital libraries are works in the public domain.[61] Many works in the gray zone of law, where copyright can be challenged, are simply not shown to the public, so as to avoid expensive legal trials. Some types of content, such as audiovisual, which demand the clearance of packages of rights and not simply those of a single author or rights-holder, are almost completely absent from public digital collections. In the end of the day, the user may be presented with a much skewed picture of our cultural heritage, and may indeed become disinterested if she or he does not have a particular passion for things created before the 20th century. These issues are by no means trivial nor plainly technical and call for

discussions with various stakeholders, so that solutions that serve both public and private interests are found.

3.2. The Question of Access

John Merryman famously formulated the triad of cultural policy goals as preservation, truth, and access.[62] He also clarified that these values should be considered in declining order of importance, so that if there is a conflict between preservation and access,[63] preservation takes priority, and in a conflict between truth and access, truth trumps access. While preservation certainly remains important also with intangible, digitized property and "property" does not somehow lose its gravity as a concept,[64] the value of access may have increased and may demand more policy attention and more actions to secure it.

While content may have proliferated under the conditions of the digital networked environment, this does not automatically mean that it is readily accessible. There are barriers of a different type. Some exist at the infrastructural level, such as no access to broadband Internet or failing networks. Others are implanted at the applications level, such as lack of interoperability between different types of platforms or software. A third category of barriers, very much in the sense of the issues we addressed in the preceding section, are placed at the content level because of copyright protection or other obstructions imposed, for example, through DRM. Increasingly important are also barriers of societal character, related to the digital literacy of the users. This can be thought of as a "second" digital divide, which goes beyond mere connectivity and presents a greater challenge. Digital literacy is broader and encompasses a set of skills needed to efficiently and effectively navigate in cyberspace, to create, contribute, distribute, access, use, and reuse content.[65] Although the use of digital media in contemporary societies is on the rise, there should not be an automatic presumption of digital literacy.[66]

All of these barriers impede access to cultural content, the engagement in active intercultural dialogue or various creative activities, thus distorting the conditions for a vibrant culturally diverse environment. The trouble with designing appropriate measures to dismantle these barriers to cultural content and foster participation is that they again, as noted earlier, fall into different, often disconnected, policy areas, and demand an integrated cultural policy agenda.

3.3. Thinking about Our "Memory Institutions"

Finally, I would like to stimulate our thinking about the future of global cultural law and policy by employing the concept of memory institutions, as developed by Guy Pessach.[67]

One can conceive of memory institutions as "social entities that select, document, contextualize, preserve, index, and thus canonize elements of humanity's culture, historical narratives, individual, and collective memories."[68] Archives, museums,

and libraries are well-known examples of traditional memory institutions that have over the years become important hubs of cultural information, as well as curators of contemporary cultural processes. However, they have rarely functioned in interlinked ways, as analog did not allow this, but were rather single initiatives, which fought for the gains of network effects in attracting audience. In recent years, we have seen the emergence of new "networked memory institutions," in the form of online platforms, social networks, peer-to-peer file-sharing infrastructures, digital images agencies, online music stores, and search engines' utilities. These institutions make use of the affordances of digital media, as sketched earlier, and in effect take up important derivative functions.[69] "The preservation of digital artefacts covers now much more than the scope of tangible preservation by traditional memory institutions (museums, archives, libraries, and private collectors)"[70] and becomes decentralized and dynamic involving also many private individual or community-based projects.[71] Pessach highlights, among other things, two important trends in the remaking of our institutions of cultural remembering. The first is that most of them are "for-profit" organizations, such as the Google Books Project, digital archives of newspapers and photographs, or online music stores such as Apple's iTunes and Rhapsody. These, even if presently functioning under free access, can change their business models and make access and use conditional on a payment.[72] Second, the "fact that digitized cultural retrieval deals with intangible goods that are governed by copyright law stimulates the privatization of networked memory institutions through two accumulative tracks: (1) the commodification of digital cultural artefacts, including buyouts of copyright portfolios with cultural significance by commercial enterprises; [and] (2) copyright law's pressure on traditional public-oriented memory institutions (e.g., museums and libraries) to change their policies toward third parties who wish to access and use copyrighted, cultural works that such institutions possess and manage."[73]

Overall, we see a process of remaking key cultural institutions in societies; the conditions of ensuring preservation, truth and access may be seriously affected in this process. It appears also that the public interest may not be adequately reflected in the present legal frameworks, at either the national or international levels.

4. CONCLUDING REMARKS

The foregoing analysis has perhaps raised more questions than it has answered. The central argument this article sought to make is that the existing cultural policy instruments have not sufficiently considered the impact of digital technologies or have not done so at all. They are in effect still grounded in analog and offline thinking and do not reflect the complex contemporary processes of cultural creation, distribution, consumption, and preservation evolving in the digital environment.

While the promise of "cloud culture," where there is more culture and it is more available than ever before to people, because of indefinite digital stores of data

in the cloud, ubiquitous broadband, new search technologies, and access through multiple devices,[74] is a grand one, it comes with certain challenges attached. There is a need for a more granular understanding of the complex processes unfolding, which can give a good basis for a collective effort in the public interest to ensure the preservation, truth and access to our cultural heritage in a sustainable manner. This may mean both less and more regulation, as for example, digital media reduce the thresholds for creativity and participation, while conversely, the digital may exacerbate the mismatch between noneconomic and economic interests in cultural matters, especially as the current legal framework gives a priority to the protection of the latter.

ENDNOTES

1. See e.g., Geller, "Copyright History and the Future," 209–64; Sunder, "IP3," 257–332; Cohen, "Copyright, Commodification, and Culture," 121–66; Cohen, "Creativity and Culture in Copyright Theory," 1151–205.

2. Merryman, "Two Ways of Thinking," 831–53.

3. See e.g., Forrest, *International Law and Cultural Heritage*.

4. See e.g., Sunder, "Cultural Dissent," 495–567; Mezey, "The Paradoxes of Cultural Property," 2004–2046; Norris and Inglehart, *Cosmopolitan Communications*; Gillman, *The Idea of Cultural Heritage*; Fincham, "The Distinctness of Property and Heritage," 641–84; see also Merryman, *Thinking about the Elgin Marbles*.

5. Article 1(g), UNESCO, Convention on the Protection and Promotion of Diversity in Cultural Expressions, 20 October 2005 [hereinafter *the UNESCO Convention* or *the 2005 UNESCO Convention*].

6. See e.g., Footer and Graber, "Trade Liberalisation and Cultural Policy," 115–44.

7. See e.g., Charlesworth, "A Discipline of Crisis," 377–92; Domingo, "The Crisis of International Law," 1542–593; Trachtman, *The Future of International Law*.

8. United Nations, Convention for the Safeguarding of the Intangible Cultural Heritage, U.N. Doc.MISC/2003/CLT/CH/14, 17 October 2003.

9. As of 20 November 2013, 133 countries ratified the Convention. See http://portal.unesco.org/la/convention.asp?KO=31038&language=E (accessed 10 February 2014).

10. United Nations, Declaration on the Rights of Indigenous Peoples, U.N. Doc. A/RES/61/295, 13 September 2007.

11. At that time several countries with the European Union (EU) and Canada at the forefront fought the so-called *exception culturelle* battle. As the name suggests, it aimed at exempting any product or service that is culture-related from the rules of the negotiated WTO Agreements. The prime focus of the campaign was on the exclusion of audiovisual services—i.e., films, television programs, and video and sound recordings, as these were conventionally highly protected sectors and faced significant competition from the U.S. entertainment industry. For details, see Acheson and Maule, "Convention on Cultural Diversity," 243–56; Burri, "Cultural Diversity as a Concept," 1059–1084.

12. Burri, "Cultural Diversity as a Concept," 1059–1084.

13. For detailed critique, see Craufurd Smith, "The UNESCO Convention," 24–55; and Burri, "Trade and Culture in International Law," 49–80.

14. Burri, "The UNESCO Convention on Cultural Diversity," 1–24.

15. See e.g., Graber, "A Counterbalance to the WTO," 553–74.

16. See e.g., Craufurd Smith, "The UNESCO Convention."

17. See comprehensively, Helfer and Austin, *Intellectual Property and Human Rights*.

18. Craufurd Smith, "The UNESCO Convention," 30–32; see also Pauwels et al., "Culture Incorporated; or Trade Revisited?," 125–58; see in general, Raustiala, "Form and Substance in International Agreements," 581–614.

19. For an overview of the different positions, see Sauvé and Steinfatt, "Towards Multilateral Rules on Trade and Culture," 323–46; Slotin, "Perspectives on Pop Culture Discrimination," 2289–320; Pager, "Beyond Culture vs. Commerce," 63–136.

20. See e.g., Graber, *Handel und Kultur*.

21. Singh, "Culture or Commerce?," 36–53.

22. See Giddens, *Runaway World*; Cowen, *Creative Destruction*, 146; Cowen, *In Praise of Commercial*, 15–43.

23. See e.g., Bruner, "Culture, Sovereignty, and Hollywood," 351–436; see Sunder, "Cultural Dissent," 495–567;

24. See e.g., Sunder, "Cultural Dissent"; Mezey, "The Paradoxes of Cultural Property," 2004–2046; Norris and Inglehart, *Cosmopolitan Communications*.

25. See e.g., Geismar, "Defining the Digital," 254–63.

26. Benkler, *The Wealth of Networks*, 2.

27. Benkler, *The Wealth of Networks*, 2. For a brief overview of these transformations, see e.g., Burri, "Digital Technologies and Traditional Cultural Expressions," 33–63.

28. Anderson, *The Long Tail*.

29. Pager, "Digital Content Productions in Nigeria and Brazil," 262–87.

30. Benkler, *The Wealth of Networks*, 59–90.

31. Goodman, "Media Policy Out of the Box," 1389–472.

32. Lessig, "Code: Version 2.0," 245.

33. Napoli, "Persistent and Emergent Diversity Policy," 167–81.

34. Miel and Farris, *News and Information*, 33. On the possible negative effects of online sharing on cultural diversity and the correlation with cultural quotas, see also Hervas-Draney and Noam, "Peer-to-Peer File Sharing and Cultural Trade Protectionism."

35. Hindman, *The Myth of Digital Democracy*.

36. See Benkler, *The Wealth of Networks*; see also Benkler, *The Penguin and the Leviathan*.

37. Sunstein, *Republic.com 2.0*; see also Sunstein, *Echo Chambers*; and more recently, Pariser, *The Filter Bubble*.

38. Benkler, "From Consumers to Users," 561–79; Goodman and Chen, "Advance Broadband and Enrich Connected Communities," 81–124.

39. Zittrain, *The Future of the Internet*.

40. Burris et al., "Changes in Governance," 12.

41. Next to the proliferation of self- and co-regulatory models, cybergovernance knows also the so-called multistakeholder model, which involves participation by all affected parties, be it standard-setting agencies, commercial companies, civil society, or individuals. Tambini et al., *Codifying Cyberspace*.

42. Burri, "Controlling New Media (without the Law)," 327–42.

43. Lessig, *Code and Other Laws of Cyberspace*; Lessig, *Code: Version 2.0*; Brownsword and Yeung, *Regulating Technologies*.

44. See e.g., Brousseau et al., *Reflexive Governance*.

45. United Nations, *Fragmentation of International Law*.

46. European Commission, "Europeana: Next Steps"; also European Commission, "i2010: Digital Libraries."

47. http://europeana.eu (accessed 10 February 2014).

48. http://pro.europeana.eu/web/guest/about/facts-figures (accessed 10 February 2014).

49. http://creativecommons.org/licenses/ (accessed 10 February 2014).

50. http://creativecommons.org/publicdomain/zero/1.0/ (accessed 10 February 2014).

51. http://pro.europeana.eu/usage-guidelines (accessed 10 February 2014).

52. http://dp.la (accessed 10 February 2014).

53. http://library.si.edu/digital-library (accessed 10 February 2014).
54. http://dp.la/apps (accessed 10 February 2014).
55. See e.g., Geismar, "Defining the Digital," 254–63.
56. For an excellent collection of papers on the digital return, see the special issues Bell et al., "After the Return: Digital Repatriation and Indigenous Knowledge."
57. For some early critique of the Europeana project, see Erway, "A View on Europeana," 103–21.
58. See e.g., Erway, "A View on Europeana," 103–21; Europeana, *Europeana Strategic Plan 2011–2015*.
59. It is often difficult or impossible to locate the owner of copyright in a work for various reasons, e.g., anonymous work, impossibility of tracing copyright through multiple transmissions, or because the owner's representative cannot be located. Such works are commonly called "orphan." It is impossible to negotiate over the use of such works. Potential users are reluctant to use orphan works in projects that would make the older works available to the public (such as in digital libraries). See e.g., Hansen, "Orphan Works," as well as the rest of the Berkeley Digital Library Copyright Project papers available at: http://www.law.berkeley.edu/12115.htm (accessed 12 February 2014).
60. Pessach, "[Networked] Memory Institutions," 92–93; see also Pessach, "Unveiling the Scope of Copyright Diversity Externalities," 1067–104.
61. Copyright is limited in time. After its expiry, the work becomes free for everyone to use; it enters the "public domain." The duration of copyright varies depending on the type of work, its publication status, and the place of first publication. For an excellent brief guide, see Hirtle et al., *Copyright and Cultural Institutions*, 39–54.
62. Merryman, "The Nation and the Object," 64–65; see also Merryman, "The Public Interest in Cultural Property," 339–64.
63. Merryman noted that while there may be many legitimate claims to access, "the object in question can only be in one place": Merryman, "The Public Interest in Cultural Property," 360–61.
64. See e.g., Merges, "The Concept of Property in the Digital Age," 1239–275.
65. See e.g., Hargittai, "Variation in Internet Skills and Uses," 92–113.
66. Hobbs, *Digital and Media Literacy*, 25.
67. Pessach, "[Networked] Memory Institutions."
68. Pessach, "[Networked] Memory Institutions," 73.
69. Pessach, "[Networked] Memory Institutions," 73.
70. Pessach, "[Networked] Memory Institutions," 82.
71. Pessach, "[Networked] Memory Institutions," 82–84.
72. Pessach, "[Networked] Memory Institutions," 92–94, referring also to Tushnet, "My Library"; see also Vaidhyanathan, *The Googlization of Everything*.
73. Pessach, "[Networked] Memory Institutions," 92.
74. Leadbeater, *Cloud Culture*, 36.

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